

ORIGINAL

FEDERAL COMMUNICATIONS COMMISSION

In Re Applications of:)
GROUP COMMUNICATIONS, INC.)
Order to Show Cause Why the)
License for Station KRGQ(AM))
West Valley City, Utah Should)
Not be Revoked)

MM Docket No.: 96-201

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Re Applications of:)
) MM Docket No.: 96-201
GROUP COMMUNICATIONS, INC.)
)
Order to Show Cause Why the)
License for Station KRGQ(AM))
West Valley City, Utah Should)
Not be Revoked)

Wednesday,
November 6, 1996

U.S. Federal Communications
Commission
2000 L Street, N.W.
Courtroom No. 3
Washington, D.C. 20006

The above-entitled matter came on for hearing
pursuant to notice, at 9:00 a.m.

BEFORE: HON. JOSEPH CHACHKIN
Administrative Law Judge

APPEARANCES:

On behalf of the Federal Communications Commission:

ROBERT A. ZAUNER, ESQ.
Federal Communications Commission
Mass Media Bureau
2025 M Street, N.W.
Room 7212
Washington, D.C. 20006
(202) 418-1740

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APPEARANCES (Continued):

On Behalf of Group Communications, Inc.:

HARRY C. MARTIN, ESQ.
Fletcher, Heald, and Hildreth
1300 North 17th Street
Rosslyn, Virginia 22209
(703) 812-0415

I N D E X

WITNESSES: DIRECT CROSS REDIRECT RECROSS VOIR DIRE
None.

E X H I B I T S

IDENTIFIED RECEIVED REJECTED
None.

Hearing Began: 9:00 a.m.

Hearing Ended: 9:20 a.m.

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1 P R O C E E D I N G S

2 JUDGE CHACHKIN: This proceeding concerns an order
3 to show cause whether Group Communications, Inc., the
4 Licensee for Station KRGQ (AM), West Valley City, Utah,
5 should be revoked or not. May I have the appearance on
6 behalf of the parties? On behalf of Group Communications,
7 Inc?

8 MR. MARTIN: Harry C. Martin, of Fletcher, Heald &
9 Hildreth, 1300 North 17th Street, Rosslyn, Virginia 200 --
10 I'm sorry. I'll come back with the zip code. Harry C.
11 Martin.

12 JUDGE CHACHKIN: Okay. On behalf of the Chief,
13 Mass Media Bureau?

14 MR. ZAUNER: Robert A. Zauner.

15 JUDGE CHACHKIN: All right. Where do we stand in
16 this case? Mr. Martin?

17 MR. MARTIN: After issuance of the HDO, we filed
18 an application to -- for minor changes, to change the
19 transmitter site of the facility, and put her back on the
20 air. And in that application we provided the Bureau with
21 copies of the last silence authorization which had been
22 issued to the facility, and a timely request to renew that
23 authorization, which has yet to be acted upon.

24 So, currently KRGQ is silent with authority. I
25 know the HDS says it's without authority, but under the law

1 we are currently -- we have authority to remain silent, and
2 apparently that view is agreed with by the processing line,
3 because they have accepted our application for filing, and
4 according to Jim Crutchfield, unless he hears otherwise from
5 the hearing staff, it will be granted in a few weeks.

6 And at that point we will put the station back on
7 the air, and file for a summary decision.

8 JUDGE CHACHKIN: What's the position of the
9 Bureau?

10 MR. ZAUNER: First of all, Your Honor, I don't
11 know the basis for saying that it has been accepted for
12 filing. As I understand, this is a minor Mod Application
13 that has been filed, and I just don't understand the basis
14 for the statement that it has been accepted for filing.

15 MR. MARTIN: In Report Number 23851, issued
16 October 22nd, 1996, the application was accepted for filing,
17 and given File Number BP961010AB.

18 MR. ZAUNER: Well, Your Honor, that's an automatic
19 action that is taken with any application that is -- minor
20 Mod Application that's filed with the Audio Services
21 Division. That doesn't mean that it has been accepted, or
22 that it is going to be acted upon. That just is a record of
23 the fact that it was filed.

24 MR. MARTIN: This notice says it was accepted for
25 filing, Your Honor.

1 MR. ZAUNER: But the process, or the policy of the
2 Audio Service Division is not to process modification
3 applications for silent stations that have been designated
4 for hearing, and as far as I know that policy has not
5 changed.

6 MR. MARTIN: Your Honor, our position is that
7 since we had a valid silence authorization for which we
8 sought renewal on a timely fashion, which has not been acted
9 upon, that under the Communications Act, we still have a
10 valid silence authorization.

11 And if the Bureau is not going to process our
12 application so we can go back on the air, then this --
13 there's to me no need for further proceedings. We will just
14 have to wait for the due course to proceed, and I guess go
15 to the Court of Appeals, and point out the position we have
16 been in. We are ready, willing, and able to put this
17 station back on the air.

18 There was a long delay, in terms of locating
19 transmitter sites, and deciding whether to change cities of
20 license. But during that entire period we explained our
21 position, and were granted authority to remain silent by the
22 Bureau.

23 And our last request, as I said, is still pending.
24 So, we still have a valid silence authorization, and
25 hopefully the Bureau will process and grant our application,

1 and we can put the station back on the air by the end of the
2 year.

3 JUDGE CHACHKIN: So you disagree with the
4 designation order; is that what you're saying?

5 MR. MARTIN: I do, but I can't file a
6 reconsideration of a designation order. The designation
7 order is incorrect, we have a valid silence authorization.

8 JUDGE CHACHKIN: On what basis do you have a valid
9 silence authorization?

10 MR. MARTIN: I could enter these documents and
11 make them exhibits today if you would like, Your Honor.

12 JUDGE CHACHKIN: No, I am just curious as to find
13 out what your basis is, why you disagree with the position
14 that is stated in the designation order.

15 MR. MARTIN: Okay. On August 24, 1995, James
16 Bertl, of the -- on behalf of the Chief of the AM Branch,
17 Audio Services Division, extended KRGQ's silence authority
18 for six months. The sixth month would have been February
19 24th, 1996.

20 On February 20, 1996, four days in advance of the
21 expiration, we requested an extension of the silence
22 authorization. It has been the practice of the FCC pursuant
23 to Section 307(c)(3) of the Communications Act, to permit
24 people to operate pursuant to authorizations that remain
25 pending. I'm sorry, that have been in existence when a

1 valid request for extension or renewal is pending.

2 Basically, the authorization under the law remains
3 in effect, pending consideration of the extension of renewal
4 request. That has been the practice as long as -- since
5 307(c)(3) was passed by Congress.

6 We have a valid request for extension of our
7 silence authorization now pending, and therefore have a
8 valid silence authorization.

9 JUDGE CHACHKIN: What is the position of the
10 Bureau?

11 MR. ZAUNER: Your Honor, the hearing designation
12 order in this case makes it clear that in the Licensee's
13 last request for an extension of its STA, that it had not
14 demonstrated that causes beyond its control prevented the
15 expeditious resumption of broadcast operations.

16 Therefore, this case was designated for a hearing.
17 The hearing issues in this case are whether or not Group
18 Communications has the capability and intent to
19 expeditiously resume the broadcast operations of KRGQ (AM)
20 consistent with the Commissions' rules, and that issue is
21 what we are here to try.

22 And the argument of whether or not the MOD
23 application should be processed is different than the issue
24 that we have here before us today, and the policy, as I've
25 said, of the Audio Service Division is not to process the

1 Mod applications of silent stations that are designated for
2 hearing.

3 MR. MARTIN: Your Honor, without the minor change
4 being granted, we cannot go back on the air because, as we
5 explained in our first request for silence authority on
6 August 16, 1995, the station was evicted from its site in
7 January of 1995.

8 And that was an involuntary situation, where they
9 lost their site. In order to go back on the air, the Mass
10 Media Bureau needs to process our application. And as I
11 said, as far as the Bureau's comment about the HDO in no way
12 dealt with our silence authorization. It only said that we
13 were off the air without authority.

14 It made no statement that our request had been
15 denied. I think in that respect it simply was mistaken.

16 JUDGE CHACHKIN: Well, I have no authority to
17 countermand an HDO. If this is an order to show cause, the
18 Bureau has the burden of proceeding and proof, and I assume
19 that the Bureau is prepared to go forward with its burden.

20 MR. ZAUNER: Correct, Your Honor.

21 JUDGE CHACHKIN: And all that remains for me
22 basically is to set dates. We already have a hearing date
23 for February 12th, and I am prepared to set intervening
24 dates at this time. Well, first of all, does the Bureau
25 contemplate any discovery?

1 MR. ZAUNER: No, Your Honor.

2 MR. MARTIN: Your Honor, would --

3 JUDGE CHACHKIN: Do you contemplate any discovery,
4 Mr. Martin?

5 MR. MARTIN: Well, as I said, our plan is to
6 simply put the station back on the air. If we need to, we
7 will put it back on the air with some sort of temporary
8 antenna at the old location just to get back on the air
9 before the deadline.

10 I suppose that is what we will have to do. I
11 think it is counterproductive, however. I think it would be
12 a simple thing to grant the minor change application. It's
13 a single tower, and we've got a site. We have a valid
14 silence authorization, and I think a very good case for the
15 Court of Appeals if the Commission is not going to grant us
16 authority to go back on the air between now and February.

17 JUDGE CHACHKIN: Well, that's out of my control.

18 MR. MARTIN: Right.

19 JUDGE CHACHKIN: I can't control what the Bureau
20 is going to do.

21 MR. MARTIN: And I see that the hearing date is
22 set for a date after the deadline for going back on the air.
23 So, by that time there won't be much need for a hearing
24 because the Commission, if we are not back on the air, there
25 is nothing the Commission can do to extend our license.

1 MR. ZAUNER: If I heard Mr. Martin correctly
2 though, he said they were planning if necessary to go back
3 on the air, at least on a temporary basis, at their old
4 site.

5 MR. MARTIN: That's my plan.

6 MR. ZAUNER: That being the case, they would not
7 go off the air as of the 12th by operation of law.

8 MR. MARTIN: Until this moment, I thought that the
9 Bureau was processing our application, having accepted it
10 for filing, and I suppose that -- I'm not saying that is
11 what we are going to do. But I think that is what I will
12 recommend. I don't think I have any discovery. I don't
13 believe so.

14 JUDGE CHACHKIN: All right.

15 MR. ZAUNER: Your Honor, there is also a
16 possibility here for a motion for summary decision I would
17 think.

18 JUDGE CHACHKIN: Well, that's up to you. I think
19 that's the way most of these cases have gone. I think the
20 facts are not really in dispute here. The only question is
21 the inferences to be drawn from those facts. And therefore
22 a motion for a summary decision might well lie, because the
23 Bureau has the option, of course, of taking exceptions to
24 any ruling, if it is favorable to you, Mr. Martin.

25 So that would also delay the time for a

1 resolution, but you can proceed by a motion for summary
2 decision, or the Bureau can proceed by a motion for a
3 summary decision if it's up to the parties.

4 MR. MARTIN: Well, it seems to me that the only
5 thing we could do is say "this station is on the air. The
6 issues are moot", and if it's not, we can't.

7 JUDGE CHACHKIN: Well, I don't know. The issues -
8 - there are specified issues, and you could address them in
9 a motion for a summary decision if you feel that the
10 resolution should be in your favor.

11 I am in a position where all I have is a
12 designation of whether the Bureau has the burden of
13 proceeding, and whatever steps the parties want to take is
14 up to them, but I have to proceed with a hearing, and if a
15 motion for summary decision is filed, of course I will rule
16 on it.

17 If it isn't, then we will proceed with the date.
18 I'm curious about this February 12th date. How -- what
19 happens on February 12th in the case where -- where a case
20 has been designated for a hearing, and the station is not on
21 the air, as you interpret it, Mr. Martin.

22 MR. MARTIN: Your Honor, the statute is clear that
23 this station loses its license.

24 JUDGE CHACHKIN: Even if it is in litigation?

25 MR. MARTIN: Excuse me?

1 JUDGE CHACHKIN: Even if it is in litigation?

2 MR. MARTIN: Well, that would be my understanding.

3 I don't know what the Commission could do. I don't think
4 there is anything that the Commission could do, whether it
5 is through its Judges, or its Bureaus.

6 MR. ZAUNER: That's my understanding, Your Honor.

7 JUDGE CHACHKIN: Is that your understanding? So,
8 it doesn't make any difference whether it is a hearing at
9 the time and it is being litigated as to whether or not good
10 cause has been shown? If it is not on the air at that time,
11 it loses its license?

12 MR. MARTIN: You see, that is the injustice here,
13 Your Honor, is that the Bureau is basically -- has an "off
14 with their heads" philosophy against people who aren't on
15 the air, and my case is an exception, because we have
16 diligently maintained silence authority, and it has been
17 granted by the Bureau.

18 But now because they have simply a dragnet against
19 all the stations that have been off the air without
20 authority, we have been caught up in that, even though we
21 have authority to be off the air. And they are basically
22 not going to -- I'm learning today -- not process our
23 application.

24 I don't think that is fair, I think it is unjust,
25 because we cannot go back on the air from the site where we

1 had been evicted, as we had explained in the applications
2 for silence authority, which have been granted by the
3 Bureau.

4 And I would move that Your Honor order the Bureau
5 to process our application under those circumstances.

6 JUDGE CHACHKIN: I have no authority to move the
7 Bureau to process your application. I have no such
8 authority. As I say, the only way that you could bring this
9 to a head quicker is to file a motion for summary decision.
10 Absent that, I have a hearing date, and I am going to
11 proceed with setting up dates.

12 So, with the understanding there is not going to
13 be any discovery here, and a hearing date of February 12th,
14 unless a party wants to move it up, I am willing to consider
15 that.

16 Anyone want to move up the date, I will consider
17 that. If there is not going to be any discovery, there is
18 no need for having a hearing on February 12th. We could
19 probably have an earlier hearing if the parties wished that.
20 Mr. Martin, do you have any views on that?

21 MR. MARTIN: I don't at the moment. I may address
22 Your Honor in a written motion, but at this time I have no
23 -- our plan remains the same, to try to convince the Bureau
24 to process our application.

25 JUDGE CHACHKIN: And what is the Bureau's position

1 about moving the date up from February 12th?

2 MR. ZAUNER: We have no position on that.

3 JUDGE CHACHKIN: Is there any problem with trying
4 this case in December?

5 MR. MARTIN: Your Honor, I don't think there is
6 going to be a need for a trial. I think the only issue in
7 the case is whether KRGQ is back on the air.

8 MR. ZAUNER: Your Honor, there is also a question
9 as to their past lack of diligence in returning the station
10 to the air, and also a question as to whether or not they
11 will maintain the station on the air once they get a grant
12 of the license.

13 MR. MARTIN: I would say that if we are able to
14 put the station back on the air and begin broadcasting with
15 full hours of operation, that those issues will be moot.

16 JUDGE CHACHKIN: Well, I'm not going to get into
17 an argument. I am prepared if the parties want to try this
18 case sometime in December, if not, we will continue with the
19 February 12th date.

20 MR. MARTIN: I would prefer to continue with that
21 date, and we will move, Your Honor, if we want to try a
22 different date, if that's okay.

23 JUDGE CHACHKIN: All right. Then we will proceed
24 with the February 12th date, and we will have the exchange
25 of exhibits two weeks earlier, which would be -- and I don't

1 have a calendar with me. When does February 12th fall on?
2 I can get my calendar if you want to wait a minute. I'll
3 just get my calendar, and I'll be back.

4 (Brief recess.)

5 JUDGE CHACHKIN: Back on the record. We will have
6 an exchange of exhibits on January 29th, and February 5th
7 for notification of witnesses for cross-examination.

8 MR. ZAUNER: February 6th?

9 JUDGE CHACHKIN: February 5th.

10 MR. MARTIN: And the exhibit exchange is January
11 29th?

12 JUDGE CHACHKIN: Yes, two weeks prior to February
13 12th, and February 5th is the notification of witnesses.
14 And the hearing date will remain at February 12th, which is
15 Lincoln's Birthday, 1997.

16 And as I have indicated, since there is not going
17 to be any discovery, I am prepared to try the case sometime
18 in December if the parties indicate that they would prefer
19 that date. Anything further? Does the Bureau have anything
20 further?

21 MR. ZAUNER: Nothing, Your Honor.

22 JUDGE CHACHKIN: All right. We are now in recess.
23 Thank you.


24 (Whereupon, at approximately 9:20 a.m., the
25 hearing was concluded.)

REPORTER'S CERTIFICATE

FCC DOCKET NO.: 96-201
CASE TITLE: Group Communications, Inc.
HEARING DATE: November 6, 1996
LOCATION: Washington, D. C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.


Date: 11/6/96


Official Reporter
Heritage Reporting Corporation
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I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

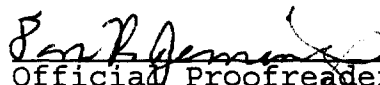
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PROOFREADER'S CERTIFICATE

I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

Date: 11/13/96


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